

H3RKGREP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 CR 781 (RJS)

5 GARFIELD GREEN,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 27, 2017

11:30 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM,

16 Acting United States Attorney for the  
Southern District of New York

17 MARGARET GRAHAM

Assistant United States Attorney

18 CESAR de CASTRO

19 Attorney for Defendant

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1 (Case called)

2 THE COURT: Let's take appearances.

3 For the government?

4 MS. GRAHAM: Good morning, your Honor. Margaret  
5 Graham, on behalf of the government.

6 THE COURT: Okay, Ms. Graham. Could you just file a  
7 notice of appearance? This case is listed as Mr. DiMase and  
8 only Mr. DiMase.

9 MS. GRAHAM: Yes, your Honor.

10 THE COURT: So I just want to make sure you're getting  
11 credit, and, also, I know who to blame if stuff doesn't happen.  
12 Okay?

13 MS. GRAHAM: Yes, your Honor.

14 THE COURT: Great. Thanks.

15 And for the defendant?

16 MR. de CASTRO: For Mr. Green, Cesar de Castro.

17 THE COURT: Good morning, Mr. de Castro.

18 And, Mr. Green, good morning to you.

19 We were, I think, all set to do this last week, and I  
20 don't know what happened, there was some miscommunication, and  
21 Mr. Green was not produced, but my understanding is that  
22 Mr. Green wishes to plead guilty to Count Two of the indictment  
23 pursuant to a plea agreement with the government.

24 Is that right?

25 MR. de CASTRO: That's true, Judge. If you recall the

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1 other day, we scheduled this for 11:30 because I was coming  
2 directly from a presentence interview.

3 THE COURT: Yes.

4 MR. de CASTRO: Thankfully, we did 11:30, because I  
5 just ran over here. Can I just take two more seconds? He just  
6 didn't sign the forfeiture agreement.

7 THE COURT: Take your time.

8 MR. de CASTRO: Then we'll be set.

9 THE COURT: Yes.

10 (Pause)

11 MR. de CASTRO: We're all set. Thank you for your  
12 patience, your Honor.

13 THE COURT: All right.

14 So, Mr. Green, as I understand it, you wish to plead  
15 guilty today. Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Well, before I accept your guilty plea,  
18 I'm going to ask you some questions here in court, and the  
19 purpose of my questions is, first of all, to make sure that you  
20 fully understand your rights. Okay?

21 THE DEFENDANT: Okay.

22 THE COURT: The second purpose of my questions is to  
23 make sure that you're pleading guilty because you are guilty  
24 and not for some other reason. Now, if at any point, you don't  
25 understand my questions, let me know. I'm happy to repeat or

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1 rephrase the questions, no problem there.

2 If at any point you want to talk to Mr. de Castro  
3 before you answer a question, that's fine. I'll give you as  
4 much time as you need. I don't want you to feel rushed in any  
5 way.

6 THE DEFENDANT: Okay.

7 THE COURT: In a moment, though, I'm going to have you  
8 take an oath. I'm going to have you stand, and raise your  
9 right hand, and swear that you will truthfully answer my  
10 questions. Now, once you've taken that oath, if you were to  
11 make any false statements here in court, well, that would be a  
12 crime. That would be the crime of perjury. And I tell you  
13 that not to scare you, but just to make sure you understand,  
14 it's vitally important that you be completely truthful and  
15 thorough in all your answers to my questions. Okay?

16 THE DEFENDANT: Okay. Thank you.

17 THE COURT: Do you have any questions so far?

18 THE DEFENDANT: No.

19 THE COURT: No.

20 Okay. Well, let me ask you to stand and raise your  
21 right hand.

22 (Defendant sworn)

23 THE COURT: Could you tell me your full name?

24 THE DEFENDANT: Garfield J., as in Jamaica, Green.

25 THE COURT: Mr. Green, how old are you?

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1 THE DEFENDANT: I'm 42.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: I finished high school.

4 THE COURT: Where was that?

5 THE DEFENDANT: In Jamaica.

6 THE COURT: In Jamaica, the Island of Jamaica?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Have you had any formal education  
9 since then?

10 THE DEFENDANT: No.

11 THE COURT: You read and you write English, correct?

12 THE DEFENDANT: Yeah.

13 THE COURT: You obviously speak English.

14 Are you now, or have you recently been, under the care  
15 of a doctor or a psychiatrist?

16 THE DEFENDANT: I've seen a psychiatrist since I got  
17 here. Medical? I'm diabetic and stuff like that.

18 THE COURT: Let's break those down.

19 Let's talk about the psychiatrist. So, since you've  
20 been here, you've seen a psychiatrist?

21 THE DEFENDANT: Yes.

22 THE COURT: More than once or just once?

23 THE DEFENDANT: I think once.

24 THE COURT: Once? Okay.

25 Did the psychiatrist prescribe any medication for you?

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1 THE DEFENDANT: No.

2 THE COURT: Do you have plans to follow up with the  
3 psychiatrist in the future?

4 THE DEFENDANT: No.

5 THE COURT: No? Okay.

6 If I may ask, what was the reason for your meeting  
7 with the psychiatrist when you met with him?

8 THE DEFENDANT: That's my first time being  
9 incarcerated.

10 THE COURT: So it was part of the regular screening?

11 THE DEFENDANT: Yeah.

12 THE COURT: Oh, I see. Okay.

13 But you haven't followed up with him, and you have no  
14 plans to; is that correct?

15 THE DEFENDANT: No.

16 THE COURT: Okay. And prior to that, prior to your  
17 arrest in this case, have you had any kind of psychiatric  
18 treatment, or seen a psychologist, or anything like that?

19 THE DEFENDANT: Like here -- when I lost my leg.

20 THE COURT: When you lost?

21 THE DEFENDANT: My leg.

22 THE COURT: Your leg?

23 THE DEFENDANT: Yes.

24 THE COURT: When was that?

25 THE DEFENDANT: I think late '91.

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1           THE COURT:   Okay.   And when was the last time you saw  
2 a psychiatrist or a psychologist prior -- other than the prison  
3 doctor?

4           THE DEFENDANT:   That's it.

5           THE COURT:   That was it?

6           THE DEFENDANT:   When I lost my leg.

7           THE COURT:   You also said that you've got some other  
8 health issues.   And you mentioned diabetes; is that right?

9           THE DEFENDANT:   Yes.

10          THE COURT:   Do you take medication for diabetes?

11          THE DEFENDANT:   Yeah.   Insulin.

12          THE COURT:   How often do you take insulin?

13          THE DEFENDANT:   Two times a day.

14          THE COURT:   That's by injection?

15          THE DEFENDANT:   Yes.

16          THE COURT:   Does the insulin affect your judgment, or  
17 your memory, or your ability to think clearly at all?

18          THE DEFENDANT:   No, it doesn't.   Just like probably  
19 lowers sometimes, and if I don't take it, I get phantom pain.

20          THE COURT:   Are you taking other medications besides  
21 insulin?

22          THE DEPUTY CLERK:   Metformin.

23                 And I used to take painkillers for the phantom pain,  
24 but I stopped taking it.

25          THE COURT:   Because of your leg?

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1 THE DEFENDANT: Yes.

2 THE COURT: When was the last time you took medication  
3 for that?

4 THE DEFENDANT: Probably a month ago.

5 THE COURT: A month ago? Okay.

6 In the past two days, have you taken any medication  
7 besides insulin?

8 THE DEFENDANT: No.

9 THE COURT: In the past two days, have you drunk any  
10 alcohol or taken any drugs of any kind?

11 THE DEFENDANT: No, never.

12 THE COURT: Okay. Is your mind clear today?

13 THE DEFENDANT: Yeah.

14 THE COURT: Do you understand the nature of this  
15 proceeding and what's taking place here today?

16 THE DEFENDANT: I do, Judge.

17 THE COURT: Mr. de Castro, do you have any doubt as to  
18 Mr. Green's mental competence or his ability to enter an  
19 informed plea?

20 MR. de CASTRO: I have no doubts.

21 THE COURT: And, Ms. Graham, do you have any such  
22 doubts?

23 MS. GRAHAM: No, your Honor.

24 THE COURT: All right. Neither do I. I don't know  
25 Mr. Green well, but on the occasions that I have seen him, he



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1 has struck me as very coherent, and intelligent, and aware of  
2 what's going on. His responses to my questions here today  
3 confirm that impression. And that, coupled with the statements  
4 of the lawyers, leads me to conclude that Mr. Green is fully  
5 competent to proceed with a guilty plea at this time.

6 So, Mr. Green, as I understand it, you wish to plead  
7 guilty to Count Two of the indictment in this case; is that  
8 correct?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you feel you have had enough time to  
11 discuss this case with your attorney, Mr. de Castro?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And you have had enough chance to discuss  
14 with him any possible defenses that you may have to the charges  
15 contained in this indictment?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Yes? Okay.

18 Are you satisfied with Mr. de Castro's representation  
19 of you?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Okay. Well, what I want to do now is go  
22 over with you some rights that you have as a defendant in a  
23 criminal case, and I usually do that in two ways. One is by  
24 reviewing a document that you, hopefully, have seen called an  
25 Advice of Rights Form.

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1 Do you have that, Mr. de Castro?

2 MR. de CASTRO: Yes. It's in front of him, Judge.

3 THE COURT: Great. Okay.

4 If you turn to the second page of that document,  
5 Mr. Green, there's a signature page, there are some signatures  
6 at the bottom of the page. Is one of those signatures yours?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: And before you signed that document, did  
9 you read it?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: And you had a chance to discuss it with  
12 Mr. de Castro before you signed?

13 THE DEFENDANT: Yes, I did, your Honor.

14 THE COURT: And he was able to answer any questions  
15 you may have had about that document or the rights described in  
16 that document?

17 THE DEFENDANT: Yes, he did.

18 THE COURT: And, Mr. de Castro, is that your signature  
19 as well?

20 MR. de CASTRO: Yes, it is.

21 THE COURT: And before you signed it, you reviewed it  
22 with your client?

23 MR. de CASTRO: Yes. I reviewed it with him last week  
24 as well as again today.

25 THE COURT: Okay. Great.

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1           If you could hand that up, I'll mark it as a court  
2 exhibit. I'll mark it as Court Exhibit 1. I'll date and  
3 initial it.

4           But in addition to this document, Mr. Green, I'm going  
5 to ask you some questions here in court that cover a lot of the  
6 same ground. I do that because these rights are so important,  
7 and your understanding of them is so essential, that I don't  
8 want to leave anything to chance.

9           THE DEFENDANT: All right.

10          THE COURT: So, as we go through these rights, if you  
11 have any questions about them, let me know.

12          THE DEFENDANT: Okay.

13          THE COURT: We're not in a hurry, we have plenty of  
14 time. We want do this very carefully and very thoughtfully.  
15 Okay?

16          THE DEFENDANT: Okay. Thanks.

17          THE COURT: So, the first right that I want to go over  
18 with you is your right to a speedy and public trial by a jury  
19 on the charges contained in this indictment. Do you understand  
20 that you have that right?

21          THE DEFENDANT: Yes, I do.

22          THE COURT: So, if there were a trial, the government  
23 would have the burden of proving that you were guilty beyond a  
24 reasonable doubt -- that would be the standard, beyond a  
25 reasonable doubt -- by competent evidence before you could be

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1 found guilty. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: A jury of 12 citizens would have to agree  
4 unanimously that you were guilty beyond a reasonable doubt  
5 before you could be found guilty at trial. Do you understand  
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: You would not have to prove that you were  
9 innocent if you went to trial. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You wouldn't have to prove anything. You  
12 could sit quietly and do nothing. The burden would always be  
13 on the government to prove that you were guilty beyond a  
14 reasonable doubt. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Now, in this case, and at every stage of  
17 this case, at all proceedings involved in this case, you are  
18 entitled to have an attorney, and if you couldn't afford an  
19 attorney, one would be appointed for you at no cost to you. Do  
20 you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And, so, in this case, Mr. de Castro has  
23 been appointed to represent you; is that correct?

24 THE DEFENDANT: Yeah.

25 THE COURT: So, you're not paying him to be here,

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1 right?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And that's because Mr. de Castro is one of  
4 a group of lawyers that the Court has approved to represent  
5 individuals who can't otherwise afford an attorney. We're very  
6 fortunate. We have a lot of fantastic lawyers who are willing  
7 to do that work, and, in fact, we have to turn people away.  
8 And so, Mr. de Castro has been on that list for a long time.

9 How long have you been on it, Mr. de Castro?

10 MR. de CASTRO: Going on, I think, seven, eight years,  
11 maybe.

12 THE COURT: Okay. So he's a very experienced lawyer  
13 who knows his way around federal court, and he's here to  
14 represent you at trial, or if you wish to plead guilty, then,  
15 obviously, we'll do that, but the point is, he's here to  
16 represent you no matter what. Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Now, if there were a trial in this case,  
19 the government would have to have its witnesses come into  
20 court, and they'd have to testify here in your presence. Do  
21 you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: That's because you have the right to  
24 confront your accusers. That's what the Constitution says.  
25 And so that means that all the witnesses for the government

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1 would have to come and testify right here, in this witness box,  
2 if there were a trial. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And that way, you would be able to see  
5 them and to hear them as they testify. You'd also have the  
6 right to have your attorney cross-examine those witnesses, to  
7 ask them questions, to see whether they knew what they were  
8 talking about, whether they were lying, whether they were  
9 perhaps mistaken. All of those things your lawyer could do by  
10 asking questions.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Your lawyer, Mr. de Castro, if there were  
14 a trial, could also object to the government's evidence if he  
15 thought there was some legitimate reason to keep the evidence  
16 out of the trial. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, you yourself could call witnesses,  
19 and you could present evidence if you wanted to. Do you  
20 understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You'd have the right to do that. You  
23 wouldn't have to. As I said before, you have no obligation to  
24 do anything. But if you wanted to put on a case, and call  
25 witnesses and introduce evidence, that would be your right. Do

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1 you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Now, if there were witnesses that you  
4 wanted to call, you wanted them to come to court and testify on  
5 your behalf, and they said, not a chance, I'm not coming to  
6 court, I don't want to be in court, I won't go, well, that  
7 wouldn't be the end of the story, because you could have  
8 subpoenas issued or other process used to compel those people  
9 to come to court and to testify truthfully under oath.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You yourself could testify at trial if you  
13 wanted to. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You'd have the right to get up here and  
16 testify just like any other witness. But you'd also have the  
17 right not to testify, and if you chose not to testify, the jury  
18 couldn't attach any significance to that fact. They couldn't  
19 say, well, this guy Green must be guilty because an innocent  
20 person would have gotten up here and told us his side of the  
21 story, and since he didn't do that, well, we know he must be  
22 guilty. They're not allowed to do that. And so I would tell  
23 the jury, as I do at every trial, both at the beginning of the  
24 trial and again at the end of the trial, I would remind them  
25 that the defendant is presumed innocent. I would remind them

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1 that the burden of proof is on the government, and I would  
2 remind them that if the defendant chooses not to testify, you,  
3 the jury, I would say, can't hold that against him, you can't  
4 treat that as evidence as it's not evidence of anything.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, if the jury returned a guilty verdict  
8 against you at trial, you then would have the right to appeal  
9 the jury's verdict. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And that means that you could go to the  
12 Court of Appeals, which sits upstairs in this building, and you  
13 could challenge the jury's verdict or my rulings, and you could  
14 ask the Court of Appeals to either overturn the jury's guilty  
15 verdict or to give you a new trial perhaps. You'd have the  
16 right to appeal. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Even now, Mr. Green, as you're getting  
19 ready to enter a guilty plea, you have the right to change your  
20 mind. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: We haven't yet crossed the point of no  
23 return. We're getting pretty close, but if you told me right  
24 now, hey, I've changed my mind, I'd like to go to trial, that  
25 would be okay, I wouldn't be mad at you, Mr. de Castro wouldn't



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1 be mad at you, Ms. Graham wouldn't be mad at you. We all  
2 understand this is your decision, and if you wish to go to  
3 trial, we respect that, and we'll go to trial. I think we have  
4 a date already. So, that's an option. If that's what you'd  
5 like to do, we can to that.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you still want to go forward with a  
9 guilty plea today?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that if you plead  
12 guilty, and if I accept your guilty plea today, that means that  
13 there will be no trial in this case? Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: By pleading guilty today, you will have  
16 given up your right to a trial and all the other rights that I  
17 just mentioned. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I guess the only exceptions to that are  
20 your right to counsel will continue. Mr. de Castro will  
21 continue to represent you even if you plead guilty today, so  
22 you won't give up that right.

23 And you may also have the right to an appeal, though  
24 the reality is that once you plead guilty, and once I accept  
25 your guilty plea, it would be very difficult for you to appeal

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1 and say, hey, I didn't do the things that I admitted to doing  
2 in court. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay. Now, you should also understand  
5 that as a result of your guilty plea, that means that you will  
6 be sentenced. Not today, but ultimately you will be sentenced  
7 on the basis of the crime that you pled guilty to. Do you  
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And you should also understand that by  
11 pleading guilty -- or let me put it this way: Before I accept  
12 your guilty plea, I'm going to ask you to tell me what it is  
13 you did that makes you guilty of this crime. The reason I do  
14 that is, I want to be very sure that you're pleading guilty  
15 because you are guilty and not for some other reason. But in  
16 asking you to tell me what you did that makes you guilty of the  
17 crime, I'm also asking you to give up another very important  
18 right, and that's your right not to incriminate yourself. As I  
19 said before, nobody can make you testify, nobody can make you  
20 speak to the government or even here in court, but if you want  
21 to plead guilty, I'm going to need you to tell me what you did  
22 so that I can be confident that you're pleading guilty for the  
23 right reasons.

24 Okay? Are you prepared to do that?

25 THE DEFENDANT: Yes, your Honor.

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1           THE COURT: Okay. All right.

2           So let's talk a little bit about the charges in this  
3 case and the plea agreement. So, you've seen a copy of the  
4 indictment in this case?

5           THE DEFENDANT: Yes, your Honor.

6           THE COURT: The indictment has two counts, but in this  
7 case, we're really going to be focused on the second count,  
8 which charges you with robbery. It's sometimes referred to as  
9 Hobbs Act, and Hobbs is just the name of the statute, the bill  
10 that became a law. It's a Hobbs Act robbery, and that means  
11 it's a federal robbery, a robbery that took place that affected  
12 interstate commerce. That's what makes it a federal crime as  
13 opposed to a state crime. So, that's what you've been charged  
14 with, and that's a crime that's in violation of a statute that  
15 was passed by Congress and signed by the president a long time  
16 ago, and if you looked to find it in the law books, it's Title  
17 18 of the United States Code, Section 1951 and Section 2, also.  
18 So, that's what you have been charged with.

19           Do you understand that?

20           THE DEFENDANT: Yes, your Honor.

21           THE COURT: Now, every crime is made up of what are  
22 called elements. The elements are just kind of requirements.  
23 They're the building blocks of the offense. So, before you can  
24 be found guilty of this crime, the government would have to  
25 prove each and every one of the elements of the crime beyond a

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1 reasonable doubt.

2           So, the elements -- they can sound a little technical,  
3 but they're straightforward. These are the things I'd be  
4 asking the jury to consider and determine at trial, and these  
5 are the things that I will be considering today before I accept  
6 the guilty plea. They're called the elements, and I want you  
7 to listen carefully as I state what these elements are.

8           Actually, I'll let Ms. Graham do something, so she's  
9 going to tell us what the elements of this crime are. I want  
10 you to listen carefully to her. When she's finished, if you  
11 have any questions about these elements, let me know, and we  
12 can chat about it.

13           Okay. Ms. Graham.

14           MS. GRAHAM: This crime has three elements: First,  
15 that the defendant knowingly obtained or took the personal  
16 property of another or from the presence of another; second,  
17 that the defendant took this property against the victim's will  
18 by actual or threatened force, violence or fear of injury,  
19 whether immediately or in the future; and, third, that as a  
20 result of the defendant's actions, interstate commerce or an  
21 item moving in interstate commerce was delayed, obstructed, or  
22 affected in any way or degree.

23           THE COURT: Okay. So, it sounds a little technical,  
24 but it's basically pretty straightforward. Do you have any  
25 questions about what Ms. Graham just said? Do you understand?

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1 Do you want me --

2 THE DEFENDANT: I don't understand.

3 THE COURT: You don't understand. Okay.

4 So, basically, to be found guilty of this crime, you  
5 have to have used or attempted to use force in order to take  
6 property from the person of another, and that force and that  
7 robbery has to have had an impact on interstate commerce. So,  
8 if you robbed a drug dealer, well, that would automatically  
9 affect interstate commerce because the drug trade affects the  
10 national economy, interstate economy. If you rob somebody as  
11 they were driving from one place to another or they were  
12 engaged in business that involved more than one state, that  
13 would be enough to affect interstate commerce.

14 Now, you don't have to have known about the interstate  
15 commerce part, but the government would have to prove that the  
16 robbery had an effect or could have an effect on interstate  
17 commerce. Okay?

18 THE DEFENDANT: Right.

19 THE COURT: And you have to have understood -- but you  
20 would have to have understood that what you were doing was  
21 wrong and illegal. You don't have to know the specific  
22 statute, but you had to have a sense at the time you were doing  
23 it that this was not allowed. So, those are the elements.  
24 Okay?

25 THE DEFENDANT: I understand.

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1           THE COURT: I want you to ask me questions if you're  
2 not sure of anything.

3           Now, one other thing the government would have to  
4 establish, if this case went to trial, is that some part of  
5 this crime took place here in this district. This district is  
6 the Southern District of New York, and the Southern District of  
7 New York is comprised of Manhattan, the Bronx, Westchester,  
8 Rockland, Dutchess, Putnam, a few other counties up there. So,  
9 some part of this crime would have to have taken place in this  
10 district for you to be found guilty. If it all took place in  
11 California, you couldn't be found guilty here.

12           However, this requirement, which is sometimes referred  
13 to as venue, doesn't have to be proven beyond a reasonable  
14 doubt, the way the other elements do. This venue requirement  
15 would simply have to be proven by what's called a preponderance  
16 of the evidence, which is a much lower standard, just the  
17 greater weight of the evidence would be enough. Beyond a  
18 reasonable doubt would mean the scales of justice would have to  
19 just really be imbalanced, but preponderance is just ever so  
20 slightly in favor of proving that something happened here.

21           Now, in this cases, it sounds like you have agreed  
22 that you would waive the venue requirement, and that's allowed.  
23 So, if everything took place outside of this district, it all  
24 took place in New Jersey, perhaps, or in Queens, you could  
25 still be prosecuted here if you agree to waive this venue

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1 requirement, and so that is my understanding, is that perhaps  
2 that's what you've contemplated here. We'll talk more about  
3 that, but those are the elements, and that's venue.

4 Do you have any questions about those things?

5 THE DEFENDANT: No. Thanks.

6 THE COURT: Okay. Good.

7 So let me tell you a little bit about the penalties  
8 that you face for this crime. This crime carries a maximum  
9 term of imprisonment of 20 years. It also carries a maximum  
10 term of supervised release of three years, which means that  
11 after you finished serving your prison term, you would be  
12 released, you'd come home, but you'd still be supervised by the  
13 probation office for up to three years. And that supervision  
14 would also carry with it certain terms and conditions that  
15 you'd have to comply with. So that's what supervised release  
16 is.

17 In addition, this crime also carries a maximum fine of  
18 the greatest of either \$250,000, twice the gross gain,  
19 financial gain, that was derived from this crime, or twice the  
20 gross loss that was experienced by someone else besides  
21 yourself as a result of this crime. So, whichever of those  
22 three options is the greatest, that's the maximum fine.

23 In addition, I can also order that you pay restitution  
24 to any person or entity that was harmed. So, if somebody got  
25 shot, for example, or somebody got injured, I could order you

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1 to pay that person to help compensate them for those injuries.  
2 And that's separate from a fine.

3 I can also order you to forfeit any of the property or  
4 the proceeds that were derived from this crime. So, whatever  
5 money you made or whatever money was made off of this crime, I  
6 could order you to pay it back, even if you don't have it still  
7 or even if it didn't all come to you, some of it went to  
8 coconspirators. The goal of this forfeiture is to make sure  
9 that people don't profit from crime, and so that's also part of  
10 a possible sentence.

11 I can also order you to forfeit any property that was  
12 used to carry out the crime. So, for example, if you engaged  
13 in this robbery, and you used a car for some part of the crime,  
14 I could order you to forfeit the car because the car was used  
15 to carry out the crime, and, therefore, it can be taken from  
16 you as part of forfeiture.

17 Finally, there is a \$100 special assessment that's  
18 mandatory that has to be paid, and that's, again, separate from  
19 any fine or any restitution or any forfeiture. The special  
20 assessment is designed to help cover the costs of the court --

21 THE DEFENDANT: All right.

22 THE COURT: -- of court reporters, and marshals, and  
23 law clerks, and judges, and all the things that are required to  
24 keep a system of justice running. Okay?

25 THE DEFENDANT: Okay.



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1 THE COURT: So, those are the maximum penalties.

2 Do you have any questions about any of those?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Are you a United States citizen?

5 THE DEFENDANT: I'm sorry?

6 THE COURT: Are you a United States citizen?

7 THE DEFENDANT: No, I'm not.

8 THE COURT: You're not?

9 So, you should understand that as a consequence of  
10 your guilty plea, it is at least possible, perhaps even likely,  
11 that you would be deported back to -- is Jamaica your nation of  
12 citizenship?

13 THE DEFENDANT: Yeah.

14 THE COURT: So it's possible that you would be  
15 deported back to Jamaica as a result of this crime. Do you  
16 understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You do understand that?

19 That won't be up to me.

20 THE INTERPRETER: Right.

21 THE COURT: That will be up to the executive branch,  
22 the Department of Homeland Security will decide that. And  
23 there might be things you can do to challenge that that won't  
24 be decided by me, but that there's at least a good chance that  
25 you would be deported as a result of this conviction, and I

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1 want to make sure that you understand that.

2 So, you do understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. I mentioned before that there is  
5 supervised release that's part of this crime, and the way  
6 supervised release works is that if you were to violate any of  
7 the terms and conditions of your supervised release, I could  
8 then resentence you to jail, I could send you back to jail for  
9 up to three years. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You wouldn't get credit for any of the  
12 time you'd already spent on supervised release. So, if you're  
13 on for two years and doing great, and then in the last year of  
14 a three-year term, you committed another crime, or you used  
15 drugs, or possessed a gun or something, I could then say,  
16 that's it, I'm revoking supervised release, and I'm sending you  
17 back to jail for three years, and you wouldn't get credit for  
18 the two years you'd already spent on supervised release.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 Is supervised release allowing me go to work, though?

22 THE COURT: Oh, yes, supervised release would  
23 typically be that you would be home, and working, and living,  
24 and with your family.

25 THE DEFENDANT: Okay.

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1           THE COURT: Now, because you might be deported, it  
2 might be that supervised release is not really going to apply,  
3 I don't know, but certainly supervised release is part of a  
4 sentence that I could impose. And even if you're deported,  
5 then if you ever returned, you'd have to immediately report to  
6 the probation office. Okay?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Now, I should also mention to you that  
9 there's no parole in the federal system. New York State, New  
10 Jersey, some other states have parole. Jamaica may, too, other  
11 countries have parole, and the way parole works is that the  
12 judge might impose a particular sentence on the day of  
13 sentencing, but later, while the person was serving the  
14 sentence, the parole board might decide, okay, this person is  
15 ready to go home sooner than what the judge imposed, maybe  
16 half, maybe a third. Different states do it different ways.  
17 That's not part of the federal system. This is federal court,  
18 and, here, whatever sentence I impose on you, that is the  
19 sentence that you will serve.

20           Do you understand that?

21           THE DEFENDANT: Yes, your Honor.

22           THE COURT: The only exception is that you could get a  
23 certain amount of time off, a small amount of time off, for  
24 good behavior, but that amount of time off could not be more  
25 than 15 percent of the total sentence. So, that's the maximum

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1 amount reduction, would be 15 percent. And the decision as to  
2 whether you demonstrated good behavior, that would be up to the  
3 Bureau of Prisons, it wouldn't be up to me. But, otherwise,  
4 you'd have to serve the whole sentence that I impose.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, are you serving any other sentence at  
8 this point, state, federal, or any other sentence any place  
9 else?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Now, a couple of other things about  
12 sentencing that I want to make sure you understand.

13 First of all, the decision as to what you will receive  
14 is up to me and nobody else.

15 THE DEFENDANT: Okay.

16 THE COURT: So, no matter what anybody else has told  
17 you -- whether it's your lawyer, or the government, or anybody  
18 else -- I'm not bound by that. As I sit here now, I don't know  
19 what sentence I will impose, but I'm the only one who  
20 ultimately will decide that question. So, to the extent  
21 anybody has told you what I am likely to do, don't count on  
22 that. They don't know what they're talking about because I'm  
23 the only one who knows, and I'm the only one who has authority  
24 to decide. Okay?

25 THE DEFENDANT: Okay.

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1           THE COURT: Now, there are certain factors that I'm  
2 required to consider when I decide what's an appropriate  
3 sentence. I want to just let you know what those factors are,  
4 so you have a sense as to how the process works. As I said,  
5 I'm not going to sentence you today, I'm going to sentence you  
6 a few months from now, when I have more information, but among  
7 the things I will carefully consider in deciding what's an  
8 appropriate sentence is, first of all, your own personal  
9 history.

10          THE DEFENDANT: Okay.

11          THE COURT: So I'm going to make sure that the  
12 sentence I impose is tailored to you as a person. That means  
13 looking at your entire life, from your birth right up until  
14 now. And I will consider the circumstances of your birth --  
15 were you born into tough economic circumstances, did you have a  
16 strong family structure or a weak family structure, did you  
17 have opportunities for education, do you have a work history of  
18 working legitimate jobs, do you have a prior criminal  
19 history -- because all of that is relevant to determining  
20 what's an appropriate sentence. Your family circumstances  
21 today, all of that is relevant. I'll look at all of that,  
22 because the sentence is not just about the crime, it's also  
23 about you. So I'm going to look at the entire experience that  
24 you have had right up until now.

25          Now, another factor that I have to consider involves

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1 the facts and circumstances of this crime. This is obviously a  
2 pretty serious crime. And so the sentence I impose has to  
3 reflect the seriousness of the crime. It has to promote  
4 respect for the law. It also has to provide a just punishment  
5 for this crime. So, that requires me to look at what exactly  
6 went on here, not just what the crime is called, but what  
7 exactly happened, what you did, what others did, what harm was  
8 caused, how much money was made, did this go on over a long  
9 period of time, was it a short thing. All of that matters in  
10 deciding what's an appropriate sentence. And so that's another  
11 factor that I will consider.

12 A third factor that I will consider is the need to  
13 deter or discourage you and others from committing crimes like  
14 this in the future. That's the hope, that by imposing a  
15 sentence on you in this case, I will send a message to you, and  
16 perhaps to other people, and that that message will encourage  
17 you to change your behavior, that it will have an impact on  
18 your future behavior and the future behavior of other people.

19 Now, I don't have a crystal ball, so it's hard for me  
20 to know with certainty what impact my sentence will have on  
21 anybody's future behavior, but I have to use my best judgment.  
22 I have to say, well, I think a sentence of this long is likely  
23 to send the message, and hopefully that message will sink in  
24 and will affect the way you conduct yourself in the future and  
25 the way potentially other people will conduct themselves in the

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1 future. So, that's the hope, and that's another factor that I  
2 have to consider.

3 Another factor that I have to consider involves your  
4 own needs while you're in custody. So, obviously, you have  
5 some serious health issues, which a lot of defendants don't  
6 have. I have to make sure that those issues are addressed.  
7 Not everybody has health issues. Some people have substance  
8 abuse treatment issues or mental health treatment needs. Some,  
9 frankly, just have the need for job training or educational  
10 opportunities. So I have to look at very carefully to see what  
11 your needs are and to make sure those needs are met and  
12 addressed while you're in custody. So, that's another factor I  
13 have to consider.

14 Another factor that I have to consider -- there are a  
15 lot of factors, as you can probably tell -- but another factor  
16 is something called the United States Sentencing Guidelines.  
17 Are you familiar with the sentencing guidelines? Have you  
18 heard of those before, Mr. Green?

19 THE DEFENDANT: Not really.

20 THE COURT: You know, I have a hunch you probably did.  
21 Mr. de Castro has probably --

22 THE DEFENDANT: Oh, yeah. Sorry, sorry, sorry.

23 THE COURT: Oh, no, no.

24 THE DEFENDANT: Sorry, he did told me.

25 THE COURT: That's okay. Look, today is an important

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1 day in your life, and it's a little stressful. Probably I'm  
2 asking you a lot of questions, and, you know, you're hearing  
3 some of it, and some of it, you may not be hearing. That's why  
4 I go slow. That's why I make sure if you have any questions,  
5 you get to ask them. And it's why I'm watching and paying  
6 attention, right, I'm looking to see if you're hesitating, or  
7 if you look confused, then I know, well, maybe there's a need  
8 for a follow-up.

9 So, that's why we do it this way. We want to be  
10 really careful. So I have a feeling Mr. de Castro probably  
11 told you something about this because I know he's a very  
12 thorough lawyer, but whether he did or he didn't, I always  
13 explain a little bit about how the guidelines work, just for  
14 you and then for family members, too. Okay?

15 THE DEFENDANT: All right.

16 THE COURT: So, the guidelines are a big book, and  
17 there's a version that gets sent out every year. Usually in  
18 November, they put out a new version. It changes a little,  
19 sometimes more than others, from year to year, but it's like  
20 500 pages, like almost 600 pages, so it's a long book, and it's  
21 a book that's prepared by a commission -- it's called the  
22 United States Sentencing Commission -- and that commission  
23 includes some judges, some lawyers, some law professors, some  
24 experts in the field of criminal law. And this book is  
25 designed to give guidance to judges like me who have to impose



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1 sentences.

2           So, the way it works is that every crime or type of  
3 crime is covered by a chapter in this book. So, for a case  
4 like this one, involving robbery, I would go to the chapter  
5 that relates to robbery. And once I'm in that chapter, I'm  
6 directed to make certain findings. So, I'll make a finding  
7 about whether guns were used, whether anybody was harmed, how  
8 much money was taken, and depending on the answers to those  
9 questions, I am directed to assign points, and it's a process  
10 of basically adding and subtracting points. And at the end of  
11 that process, I come up with a number, or a total, and that  
12 total is referred to as the offense level.

13           I then go to another chapter in this book that relates  
14 to what's called criminal history. And not surprisingly,  
15 people who have prior convictions, people who have gone to  
16 prison before, well, they're more likely than not going to be  
17 treated more harshly than people who have no prior convictions.  
18 And so I go to the chapter on criminal history, and I am again  
19 directed to make findings about whether there were prior  
20 convictions, if so, when they were, if so, for how long the  
21 sentence was imposed, and depending on the answers to those  
22 questions, I, again, assign points, I total those, and I come  
23 up with another number. That number is referred to as the  
24 criminal history category. There are six criminal history  
25 categories. Category I is the lowest and least serious,

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1 category VI is the highest and most serious.

2           Then with those two numbers that I have told you  
3 about, the offense level on the one hand, the criminal history  
4 category on the other, I then go to the back of this book where  
5 there's a grade or a table, and I don't know how good your  
6 eyesight is, it's probably hard to see, but it's a chart,  
7 basically, and it's got a bunch of columns and rows, and on the  
8 far left-hand column, it says at the top "Offense Level," and  
9 that column goes down, it's numbered from 1 through 43. So, I  
10 will, on the day of sentencing, go down that column, and I'll  
11 keep going till I get to the number that I found to be the  
12 offense level in this case. I'll then go across these other  
13 columns, which are the criminal history categories, one for  
14 each criminal history category, and I will keep going until I  
15 reach the criminal history category that I found to be the  
16 appropriate one in this case. And where my finger finally  
17 rests in that process, well, that would be the range that in  
18 the view of the commission that wrote this book would be  
19 appropriate. And the range is set forth in terms of months.  
20 So, I'll go through that process, and I will then announce the  
21 range.

22           Now, I'm not required to follow this book -- I'm free  
23 to sentence above or below the range that's in this book -- but  
24 I do have to make my findings under the book, I have to  
25 consider it, I have to make my findings, and I have to announce

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1 the range, because that's one of the factors that I have to  
2 consider. Okay?

3 THE DEFENDANT: Yes.

4 THE COURT: And then, finally, the last factor that I  
5 have to balance, along with all the others I've mentioned, is  
6 what's sometimes referred to as the need to avoid unwarranted  
7 sentencing disparities between similarly situated people.

8 Now, what does that mean? Well, what it means,  
9 basically, I think, is this: Before imposing a sentence on you  
10 in this case, I really have to take a step back and make sure  
11 that the sentence I'm imposing here is roughly consistent with  
12 sentences imposed in other cases involving defendants who are  
13 similarly -- who have similar histories who engage in similar  
14 conduct. And that's because it would be wrong, I think, if you  
15 had people who were very similar, who engaged in similar crime,  
16 had similar criminal histories, and, yet, some of them did the  
17 top, they really got clobbered, and others did almost nothing  
18 simply because there were different judges involved or  
19 different lawyers involved. That would look arbitrary, and it  
20 would probably promote disrespect for the law, and so judges  
21 are told that we need to make sure that the sentences are  
22 consistent where the cases and individuals are similar,  
23 recognizing no cases are exactly alike, but where there are  
24 similarities, then those similarities should be reflected in  
25 the sentences imposed. Okay?

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1           So, do you have any questions about any of those  
2 factors that I just mentioned?

3           THE DEFENDANT: No. I think I got it.

4           THE COURT: So, my job at sentencing will be to  
5 balance those things out because some of them might argue for a  
6 pretty tough sentence, while others might argue, hey, this guy  
7 deserves a break, and, so, my job will be to balance that. And  
8 it's sometimes a very difficult thing, and sometimes it's more  
9 art than science. It's not simply plugging in numbers on a  
10 calculator. But that will be the process that I engage in.  
11 Okay?

12          THE DEFENDANT: All right.

13          THE COURT: All right.

14          Now, let me make it clear to you, however, that if you  
15 were to be unhappy with the sentence that I impose, you were to  
16 think, wow, this guy gave me a sentence that I think is a lot  
17 higher than I was expecting and is a lot higher than what I  
18 think is fair, you certainly would be entitled to your opinion,  
19 and you might even be entitled to appeal up to the Court of  
20 Appeals to say I got it wrong, but you wouldn't be able to say,  
21 hey, I want my guilty plea back, I want to be able to go to  
22 trial, I want a do-over. That will not happen.

23          Do you understand?

24          THE DEFENDANT: Yes, I do, your Honor.

25          THE COURT: I said before that we had not yet crossed

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1 the point of no return, but we were getting pretty close. Once  
2 you've entered your guilty plea, and once I've accepted it,  
3 then ordinarily it's very difficult, if not impossible, to get  
4 it back, okay? And certainly, if you waited until the time of  
5 sentencing to say, wow, this guy Sullivan is a nut, that would  
6 be way too late. Okay?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: All right.

9 Now, I understand there's a plea agreement in this  
10 case. I've seen a draft of it. What I have is a letter dated  
11 March 13th. It's addressed to Mr. de Castro from Christopher  
12 DiMase, who's the other prosecutor on this case. It's a  
13 six-page single-spaced document.

14 Do you have that in front of you there, Mr. de Castro?

15 MR. de CASTRO: I do, your Honor.

16 THE COURT: If you could just put it in front of  
17 Mr. Green.

18 Sometimes there are multiple originals of these  
19 kicking around, which is fine, but I think we'll use the one in  
20 front of Mr. Green as the original that becomes a court  
21 exhibit. So, Mr. Green, if you could turn to the last page,  
22 there's a signature line at the bottom. Is that your  
23 signature?

24 THE DEFENDANT: Yes, it is.

25 THE COURT: Okay. And before you signed this

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1 document, did you read it?

2 THE DEFENDANT: Yes, your Honor, I did.

3 THE COURT: And before you signed it, did you discuss  
4 it with Mr. de Castro?

5 THE DEFENDANT: Yes, I did, your Honor.

6 THE COURT: And you feel you had enough time to  
7 discuss it with him?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: And you had a chance to ask him any  
10 questions that you may have had about this document?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Okay. And, Mr. de Castro, is that your  
13 signature underneath Mr. Green's?

14 MR. de CASTRO: That's correct, Judge.

15 THE COURT: Before you signed it, you reviewed it with  
16 your client?

17 MR. de CASTRO: Yes.

18 THE COURT: And you were able to answer any questions  
19 he may have had about this document or the consequences of  
20 signing this document?

21 MR. de CASTRO: Yes, I was.

22 THE COURT: Great.

23 If you could hand that up, I'll mark that as Court  
24 Exhibit 2, I'll date and initial it. I generally give the  
25 original back to the government, so I'm sure that the

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1 government can give you a separate original, just so you've got  
2 your own version for your files, but, this way, if there's ever  
3 any question as to what was the document we were referring to  
4 here in court, it will be obvious this is the one since it has  
5 my initials, today's date, and Court Exhibit 2 at the top.

6 Mr. Green, I'm not going to go over this in tremendous  
7 detail. It's a six-page, single-spaced document. My goodness,  
8 it's not as long as this book, but it's pretty long and pretty  
9 detailed, but there are a couple of features about it I want to  
10 make sure that you understand.

11 First of all, this is an agreement between you and the  
12 government. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: So, you have certain obligations under  
15 this agreement, and so does the government. Do you understand  
16 that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: But I don't have any obligations under  
19 this agreement. I didn't sign it, I didn't negotiate it, and  
20 I'm not bound by it. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So there may be some things in here that  
23 you and the government agree on that I say, you know what, I  
24 can't agree to that, I disagree. I don't know that that will  
25 happen, but sometimes, occasionally, it does, and if it does,

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1 then I have an obligation to follow my own judgment, okay?  
2 Even if you and the government agreed to something different.  
3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, part of this agreement that I want to  
6 make sure you are aware of is that you and the government have  
7 stipulated, or you've agreed, to what the sentencing guidelines  
8 are in this case, how this book applies in this case. Do you  
9 understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So, according to this agreement, you and  
12 the government both agree that the offense level is 25, and  
13 that the criminal history category is category I, and based on  
14 that offense level and that criminal history category, that  
15 results in a sentencing range of 57 to 71 months. So, 57  
16 months is a little bit less than five years, and 71 months is a  
17 little bit less than six years. So, that's the range,  
18 according to this book, according to how you and the government  
19 have calculated the book to apply in this case.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Again, I may reach a different  
23 determination. I may conclude that the book comes out  
24 differently, it comes out higher or lower, and if that's the  
25 case, I have to follow my own judgment. Do you understand?



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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Now, you're still free to argue for a  
3 sentence below this range, but if I sentence you within that  
4 range or below that range, you agree that you won't appeal the  
5 sentence. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: So, you may be hoping for something much  
8 lower than this guidelines range, but if I sentence you to 71  
9 months or anything less than 71 months, even if you're  
10 disappointed, it means, according to this agreement, that you  
11 will not appeal. You give up that right as part of this  
12 agreement. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Now, is there any other agreement besides  
15 this one that exists between you and the government?

16 THE DEFENDANT: That's the only agreement.

17 THE COURT: That's the only one? Okay.

18 Has anything been left out of this agreement?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Are there any other side agreements that  
21 you have with the government, either written or orally, that  
22 aren't included in this document?

23 THE DEFENDANT: No. No, your Honor.

24 Okay. No, your Honor.

25 THE COURT: Okay. Has anybody threatened you in order

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1 to get you to sign this document or to plead guilty here today?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anybody offered you anything of value  
4 in exchange for signing this document or pleading guilty here  
5 today?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Has anybody promised you what your  
8 sentence will be?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: I guess there is also a forfeiture  
11 component to this agreement. Do you have the forfeiture there?  
12 Let's put that in front of Mr. Green.

13 So, Mr. Green, this plea agreement also includes a  
14 reference to you forfeiting certain money, certain proceeds,  
15 from this crime. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And, so, in addition to this agreement,  
18 then, I was provided with what's called a consent preliminary  
19 order of forfeiture/money judgment.

20 THE DEFENDANT: Yeah.

21 THE COURT: It's a five-page document, it has eight  
22 numbered paragraphs, with a bunch of whereas clauses at the  
23 front. Do you have that in front of you there?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: If you turn to the last page, there is,

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1 once again, a series of signature lines. Is -- one of those  
2 has your name under it. Did you sign that document?

3 THE DEFENDANT: Yes, I did, your Honor.

4 THE COURT: Before you signed it, did you read it?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you discussed it with Mr. de Castro?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And you had enough time to go over with  
9 him any questions you may have had about this document and what  
10 it means?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And, Mr. de Castro, that's your signature  
13 below Mr. Green's?

14 MR. de CASTRO: Yes, it is.

15 THE COURT: And you know the drill. I guess I'm  
16 getting like a broken record, but it is important. So, before  
17 you signed this document, you reviewed it with your client?

18 MR. de CASTRO: Yes.

19 THE COURT: And answered any questions he may have  
20 had?

21 MR. de CASTRO: Yes.

22 THE COURT: Okay.

23 If you could hand that up to me. And you're getting a  
24 lot of exercise, but it's good for you.

25 MR. de CASTRO: It's good.

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1           THE COURT: This is one I'm being asked to sign as  
2 well, so I will read it more carefully, and then I presumably  
3 will sign it and docket it. But I want to make sure everybody  
4 agrees. There's a blank on page 2: "Whereas on or about,"  
5 blank, "2017, defendant pleaded guilty." I assume that's  
6 today's date, right?

7           MR. de CASTRO: Yes.

8           THE COURT: I'm going to insert today's date. We  
9 haven't yet finished this, but we're close.

10          What it says is that the money judgment, the  
11 forfeiture amount in this case, is \$252,000, and that as a  
12 result of this judgment, this order being entered, that you  
13 will owe that much money as forfeiture. Do you understand  
14 that, Mr. Green?

15          THE DEFENDANT: Yes, your Honor.

16          THE COURT: And I think it will be joint and several  
17 with your coconspirator, Mr. Clark, and if you can't -- but if  
18 he can't pay anything because he's broke, and you win the  
19 lottery or you, when you get out, have access to more money  
20 because you're working, then it may be that you have to pay it  
21 all. That's just the way it goes. Do you understand that?

22          THE DEFENDANT: Yes, your Honor.

23          THE COURT: Okay.

24          So it's up to \$252,000, plus interest, right,  
25 Ms. Graham? Ms. Graham, plus interest as well?

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1 MS. GRAHAM: Yes. One moment, your Honor?

2 (Pause)

3 THE COURT: This is a preliminary order, so at the  
4 time of sentencing, I'm likely to impose a final order, and  
5 that typically will include interest or certainly could include  
6 interest, okay?

7 MS. GRAHAM: Yes, your Honor. The agreement doesn't  
8 say anything about interest.

9 THE COURT: So, interest will be up to me, and,  
10 typically, I will impose interest. That's generally what I do  
11 unless there's a good reason not to. Okay?

12 THE DEFENDANT: Okay.

13 THE COURT: All right.

14 Mr. de Castro, are you aware of any defense that would  
15 prevail as a matter of law or any other reason why Mr. Green  
16 should not be allowed to plead guilty here today?

17 MR. de CASTRO: No, Judge.

18 THE COURT: So, Mr. Green, at this point, I'm going to  
19 ask you to tell me in your own words -- you can stay seated --  
20 but tell me in your own words what it is you did that makes you  
21 guilty of this crime.

22 THE DEFENDANT: In December, I went to Boston and  
23 participated --

24 THE COURT: Take your time. So, in December of 2000?

25 THE DEFENDANT: '14.

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1 THE COURT: '14?

2 THE DEFENDANT: Yeah. I went to Boston and get  
3 involved with a robbery.

4 THE COURT: Okay. And tell me a little bit about the  
5 robbery.

6 THE DEFENDANT: A friend of mine called from  
7 New York -- called me from Boston and asked me if I could drive  
8 up. We rented a car. He didn't have a license, so we drove it  
9 up there. When I got up there, the plan was to rob somebody.  
10 And I didn't say no. I partic -- acted along with them.

11 THE COURT: So, you were with them?

12 THE DEFENDANT: Yeah.

13 THE COURT: Understanding that they were going to be  
14 engaged in a robbery?

15 THE DEFENDANT: First, I didn't know until I got  
16 there, but once I got there, I didn't say no to them.

17 THE COURT: You continued in the process?

18 THE DEFENDANT: I continued with it.

19 THE COURT: Okay. And you knew at that time --

20 THE DEFENDANT: Yeah.

21 THE COURT: -- that what you were doing was wrong and  
22 illegal?

23 THE DEFENDANT: I know at that time. I was just too  
24 stupid to back out.

25 THE COURT: And who was being robbed?

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1           THE DEFENDANT: It was a guy that drive around with  
2 money, I think.

3           THE COURT: Money in his truck?

4           THE DEFENDANT: Armored car.

5           THE COURT: An armored car.

6           Okay. So that probably covers the interstate commerce  
7 part of this, put Ms. Graham will talk about that.

8           Part of this plea agreement, I think, said that you  
9 were going to waive venue. Remember I said some part of the  
10 crime has to have taken place here in New York, in the Southern  
11 District of New York. It seems like most of this crime took  
12 place up in Boston, and that when you drove from New York to  
13 Boston, at least initially, you weren't aware of what the plan  
14 was. By the time you got to Boston or Massachusetts, you did  
15 understand, and you agreed to participate; is that right?

16          THE DEFENDANT: Yeah, I didn't back down.

17          THE COURT: Yes. And then did you come back to  
18 New York at that point?

19          THE DEFENDANT: Yeah, we drove back straight to  
20 New York.

21          THE COURT: With the money?

22          THE DEFENDANT: With the money.

23          THE COURT: Okay. So it may be there would be venue  
24 here anyway, but you've agreed to waive venue, so that even if  
25 that isn't sufficient for venue, you've agreed that that's not

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1 a problem, and you consent being to prosecuted here rather than  
2 Massachusetts; is that correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay. All right. And there was some  
5 force used -- if not by you, at least by others -- in engaging  
6 in this robbery?

7 THE DEFENDANT: Yes, force.

8 THE COURT: They used force, a gun, or a threat of gun  
9 or violence.

10 THE DEFENDANT: They went out with a gun and robbed.

11 THE COURT: Okay. So, that's enough to establish the  
12 force element of this crime.

13 Ms. Graham, is that a satisfactory allocution to your  
14 mind?

15 MS. GRAHAM: Yes, your Honor. We would just add a  
16 proffer that they robbed an employee of an ATM restocking  
17 business that affects interstate commerce.

18 THE COURT: Yes. Okay.

19 And, Mr. de Castro, is that a satisfactory allocution  
20 to your mind?

21 MR. de CASTRO: Yes, Judge.

22 THE COURT: All right. I think so, too. I think that  
23 covers all the elements as necessary.

24 So, at this point, I'm going to ask Ms. Graham just to  
25 very briefly summarize the elements of this crime -- excuse me,



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1 to very briefly summarize the government's evidence in this  
2 case, what the government would show if the case went to trial.

3 Listen to her carefully, Mr. Green. If when she's  
4 finished, you disagree with something she said, let me know,  
5 and I will give you a chance to be heard on that. Okay?

6 THE DEFENDANT: Okay, your Honor.

7 THE COURT: Ms. Graham.

8 MS. GRAHAM: The evidence would include most  
9 critically the testimony of one of Mr. Green's coconspirators  
10 in the robbery, which would be corroborated by testimony from  
11 the victim of the robbery, surveillance video of parts of the  
12 robbery, as well as call detail records and cell site records  
13 from the phones that were used by the conspirators.

14 THE COURT: All right.

15 Do you have any questions or any disagreement with  
16 what Ms. Graham just said, Mr. Green?

17 MR. de CASTRO: Judge, I'm just repeating the last  
18 part of it.

19 THE COURT: Okay.

20 (Pause)

21 MR. de CASTRO: Thank you, Judge.

22 THE DEFENDANT: Sorry.

23 THE COURT: All right. So, you don't disagree with  
24 anything that Ms. Graham just said?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Okay.

2 So, let me now ask you to stand, Mr. Green. Oh, is  
3 that --

4 THE DEFENDANT: That's okay.

5 THE COURT: You're okay?

6 How do you now plead to Count Two of the indictment,  
7 guilty or not guilty?

8 THE DEFENDANT: Guilty, your Honor.

9 THE COURT: Did you do the things you're charged with  
10 doing in this indictment?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: Are you pleading guilty because you are  
13 guilty?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you pleading guilty voluntarily and of  
16 your own free will?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. Mr. Green, because you  
19 acknowledge that you're guilty, because your plea is entered  
20 knowingly and voluntarily, and is supported by an independent  
21 basis in fact for each of the elements, because you know your  
22 rights, and you've agreed to waive your rights, I accept your  
23 guilty plea, and I find you guilty on Count Two of the  
24 indictment. So, have a seat.

25 What we're going to do now is set a date for

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1 sentencing. Normally, I would set a sentencing date about  
2 three or four months out. That's to allow the probation  
3 department to prepare a report that is very helpful to me in  
4 deciding what's an appropriate sentence. That report is  
5 referred to as a presentence report, or a PSR, and it's often  
6 quite lengthy, it might be 25 or 30 pages long, and it will  
7 include a lot of information, much more than I have now,  
8 information about you and your life, from your birth right up  
9 until now, about your work history, about your health, about  
10 your family circumstances. It will also have a lot more  
11 information about this crime. I've heard a little bit about  
12 this crime, but the presentence report generally includes a lot  
13 more detail. If there were victims involved, the victims will  
14 have a chance to be interviewed and be heard from. So, that  
15 will also be part of the report.

16 So, the way the report is really prepared is the  
17 probation officer interviews a lot of people. So, they'll  
18 interview your family members, they'll interview your  
19 employers, perhaps, they'll interview the victim, they'll  
20 interview the agents who worked on the case, and they'll also  
21 interview you.

22 THE DEFENDANT: Okay.

23 THE COURT: So, I assume, Mr. de Castro, you want to  
24 be present for any interview?

25 MR. de CASTRO: Yes, Judge.

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1           THE COURT: And, so, I'll direct that no interview  
2 should take place unless Mr. de Castro is there.

3           I don't think that will be a problem. I've never had  
4 a situation where probation jumps the gun and tries to  
5 interview somebody without their lawyer. But if that were to  
6 happen, you would just say, hey, my lawyer is not here, the  
7 Judge told me not to proceed without my lawyer. But once the  
8 interview starts -- Mr. de Castro is there and the interview  
9 starts -- I will expect then that you will be truthful and  
10 complete in all your answers to the probation officer. Okay?

11          THE DEFENDANT: Yes, your Honor.

12          THE COURT: The probation officer works for me. They  
13 don't work for the government, they work for the Court. So,  
14 treat the probation officer with the same respect, the same  
15 courtesy that you would treat me with and that you have treated  
16 me with. Okay?

17          THE DEFENDANT: Yes, your Honor.

18          THE COURT: Because if you were to make any false  
19 statements to the probation officer, well, again, that would be  
20 a crime. It wouldn't be perjury, but it would be the crime of  
21 obstruction of justice, and it would carry consequences in this  
22 case, for the guidelines, so you could be separately prosecuted  
23 for obstruction of justice. You also would probably get more  
24 points under this book, and certain of the subtractions that  
25 might otherwise apply wouldn't apply, so that your numbers

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1 would go up, and the range would be higher, and that's in no  
2 one's interests. I have no reason to think you're going to do  
3 that. I just want to make sure you're very careful and very  
4 thorough in all your answers to the probation officer, okay?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Once the probation officer has completed  
7 the report, he or she will send it to you and your lawyer, as  
8 well as the government. You should read it carefully, word for  
9 word, cover to cover. If there is anything in that report that  
10 you think is inaccurate, tell Mr. de Castro. He will then  
11 contact the probation officer to say, hey, we disagree with  
12 what you have here, here, and here. The probation officer --  
13 the government will have the same opportunity. The probation  
14 officer will then issue a final report. That final report will  
15 come to me. That's the first one I will see. I won't get the  
16 first one, I'll get the final report. You will also get a copy  
17 of the final report, so will the government. You, again,  
18 should read the final report cover to cover, word for word,  
19 don't assume that it's unchanged from the prior version, don't  
20 assume that your requests for changes were honored, they may  
21 not have been. So, it might be totally different, it might be  
22 very much the same. Don't assume anything. Read it carefully.  
23 If there are any portions that you think are inaccurate, tell  
24 Mr. de Castro. Whether you told him from the prior version or  
25 not, tell Mr. de Castro. At that point, he will make formal

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1 objections to me if there's anything in there that he thinks is  
2 inaccurate. The government, again, will have the same  
3 opportunity.

4 If there are disputes about what's contained in the  
5 report, if there are objections, in other words, I will resolve  
6 them. We may have, like, a mini trial, maybe I'll hear from  
7 witnesses, maybe I'll review evidence, or it may be that I will  
8 just hear from the lawyers, it might be just arguments not so  
9 much about what the factors are, as much as what conclusions  
10 should be drawn from certain facts. So we'll see. Whatever  
11 the objections are, I will resolve them in the way that I think  
12 is appropriate. But I'll be very clear about what I'm doing.  
13 Okay?

14 THE DEFENDANT: Okay, your Honor.

15 THE COURT: Now, in addition to that presentence  
16 report, I will also accept whatever submissions are made in  
17 connection with sentencing. So, I expect that Mr. de Castro  
18 will make a written submission on your behalf, telling me a  
19 little bit about you as a person, explaining why the different  
20 factors that I mentioned support a particular sentence. He's  
21 free to make a recommendation. The government will have the  
22 same opportunity.

23 Naturally, I will read those reports. They can be  
24 really valuable. Excuse me, those submissions. So I'll read  
25 the PSR from the probation department, I'll read the

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1 submissions from the lawyers. If there's anybody else who  
2 wants to send me a letter, that's fine. That's very helpful,  
3 frankly. I mean, the probation officer will often have  
4 interviewed people, and so the statements of others close to  
5 you will often be reflected in the presentence report, but if  
6 you or anybody close to you wants to send me a letter to tell  
7 me more about you and more about what this case has meant to  
8 you, what impact it's had on you, that's fine. I will read  
9 those letters. They can be really helpful. They give me a lot  
10 more insight than I have. I don't know you well, right? I've  
11 seen you in court a couple of times, but I don't know you well.  
12 So, if others want to write letters, or if you yourself want to  
13 write a letter, you're very welcome to.

14 The only thing I would ask is that if you or others  
15 want to write me a letter before sentencing, have the letters  
16 sent to Mr. de Castro. He'll collect them all, he'll then  
17 attach them to his submission, and then send it to me. That  
18 way, I'll be confident that I got everything all at once, and I  
19 will be more confident that nothing has slipped through the  
20 cracks, okay?

21 Now, on the day of sentencing, we'll come back in here  
22 to court. At that point I will go over with you and the  
23 lawyers what I have received and reviewed in connection with  
24 sentencing. That way, if I've left something out, you can say,  
25 well, there was another letter, Judge, that you didn't mention,

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1 and then we can correct it. So, I'll go over everything that I  
2 have reviewed and received.

3 I will then resolve any objections, if there are  
4 objections, to what's in the presentence report. I will then  
5 make my findings under the guidelines, and then at that point,  
6 I will hear from the lawyers. They're free to expand upon or  
7 elaborate on what they wrote in their submissions. They're  
8 free to respond to each other. They may respond to questions  
9 that I ask, but I'll certainly give them an opportunity to be  
10 heard here in court.

11 If there are victims who wish to be heard, they, too,  
12 will have an opportunity to be heard in court, they have a  
13 right to be heard, so I'll allow them that opportunity.

14 And, finally, I will give you an opportunity to speak,  
15 if you'd like. You're not required to, but you have a right to  
16 speak, and I'll certainly give you that opportunity, and I'd be  
17 happy to hear from you. Okay?

18 THE DEFENDANT: Thank you, your Honor.

19 THE COURT: Now, after all of that, then I will  
20 finally tell you the sentence that I intend to impose, I'll  
21 explain my reasons, I'll then check with the lawyers to make  
22 sure I haven't done something illegal or improper, and assuming  
23 not, then I will formally impose the sentence. So, that's the  
24 process. And it's going to take a little time, but do you have  
25 any questions about any of that?



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1 THE DEFENDANT: No, your Honor.

2 THE COURT: So let's pick a date. What do we have,  
3 Ari?

4 Is that okay, Friday, July 28th? Is everybody around  
5 that day?

6 MS. GRAHAM: Yes, your Honor.

7 MR. de CASTRO: That's fine.

8 THE COURT: What time, afternoon or morning?

9 THE LAW CLERK: It looks like the afternoon is better.

10 THE COURT: 2:30? Is that okay?

11 MS. GRAHAM: That's fine, your Honor.

12 THE COURT: Is that all right?

13 Okay. If it's not a good time, we can do another  
14 time, but often I do these on Fridays, just because I like to  
15 have a block of time where I know I won't be interrupted. So,  
16 Friday, July 28th, at 2:30.

17 Between now and then, you're going to remain in  
18 custody. You'll get credit for the time that you're serving  
19 that will count toward your sentence, I believe. Stay in touch  
20 with Mr. de Castro. If that sentencing date changes for  
21 whatever reason, he'll let you know. If between now and  
22 July 28th, you think you need to see me for whatever reason,  
23 let me know. You can tell Mr. de Castro, he'll set something  
24 up, and we can then schedule something. Okay?

25 THE DEFENDANT: Thank you.

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1           THE COURT: But my hunch is that there's a lot to do,  
2 and so make sure that you're in touch with Mr. de Castro and  
3 make sure that you're preparing for the sentencing because that  
4 will be a really important day, obviously. Okay?

5           THE DEFENDANT: Thanks.

6           THE COURT: Is there anything else we should discuss  
7 today?

8           MS. GRAHAM: Nothing from the government, your Honor.

9           MR. de CASTRO: No, Judge. Thank you.

10          THE COURT: All right.

11          So, good luck to you, Mr. Green. I'll see you in a  
12 few months.

13          Let me thank the court reporter. Let me thank the  
14 marshals as well.

15          And I guess the trial that was scheduled in this case,  
16 for May, I think it was -- or was it April -- anyway is now  
17 adjourned, and so we'll just proceed with sentencing, as I  
18 said.

19          Great. Okay, thank you.

20          MR. de CASTRO: Thank you.

21          THE COURT: Let me give this back to you, Ms. Graham.  
22 Don't be shy, Ms. Graham. Put yourself on the docket  
23 sheet.

24          MS. GRAHAM: Yes, your Honor.

25                   \* \* \*